

Appendix I

Land Use Consistency Determination

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BEFORE THE STATE OF WASHINGTON
ENERGY FACILITY SITE EVALUATION COUNCIL

IN RE APPLICATION NO. 99-1

EXHIBIT ^{161.3} (JW-3)

SUMAS ENERGY 2 GENERATION
FACILITY

CITY OF SUMAS

P.O. Box 9
Sumas, Washington 98295
Phone (360) 988-5711
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MAYOR-DON PETERSON
CLERK-TREASURER-KATHRYN HARVEY

COUNCIL MEETINGS
SECOND AND FOURTH
MONDAY OF EACH MONTH

Certificate of Land Use Consistency

Project Name: Sumas 2 Generation Facility ("SE2")

Applicant/Owner: Sumas Energy 2, Inc.
335 Parkplace, Suite 110
Kirkland, WA 98033

Contact: Dave Eaden, Secretary

Vesting Date: This certificate pertains to plans and ordinances in effect January 11, 1999.

Project Description: Natural gas-fired combustion turbines, recovery steam generators and steam turbine generators to produce electrical energy for wholesale customers.

Project Location: Hesselgrave Farm site, northwest of the intersection of SR 9 and Bob Mitchell Avenue, in Section 34, Township 41 North, Range 4 East of W.M., within the City of Sumas, Whatcom County, Washington.

Land Use Plan: The SE2 site is designated for Industrial use within the *City of Sumas Comprehensive Land Use Plan* (CLUP). The site is within "area 5" on CLUP Map 6, and the pertinent area-specific discussion is shown below:

- 5) Area west of B-N main line straddling SR9. This is the major industrial area within the city. The area contains several wetlands (including a category II wetland proposed as a Natural System Protection Area), and most of the area lies within the flood plain. A swathe at the east is included in the Special Flood Risk Zone. The area has 6,000 feet of frontage on the railroad as well as 4,000 feet of frontage on SR9. A nonpotable water line, a potable water line, and a major power line extend along SR9, and sewer service is available throughout. The area is served by a haul road capable of supporting Canadian-weight trucks. Industrial zoning will continue in this area. Environmental constraints limit development in some of the area, but other portions are capable of supporting major industrial facilities. (p. 3-13, CLUP, 10/98 revision)

The proposed use is a "major industrial facility" and is consistent with planned use of the site.

The CLUP establishes a general intent with respect to industrial growth, as quoted below:

Relative to other small towns, Sumas contains a large amount of undeveloped industrial land and a variety of existing industrial firms. Residents express mixed feelings about the need for further industrial expansion. However, Sumas acknowledges that it is well positioned to accommodate certain kinds of industrial development because of factors such as: proximity to major truck and rail transportation facilities; existence of a 24-hour border crossing station; availability of water and electric power; proximity to major gas pipelines. Sumas also acknowledges the economic goals and policies developed by Whatcom County in response to county-wide needs and visions. Those goals and policies support the development of a more diversified economy that contains a broad base of industrial employers, some of which will preferably locate in the eastern part of the county to provide job opportunities for Foothills residents. In recognition of all these factors, Sumas plans to accommodate substantial industrial development. In addition to the 114 acres of developable land within city limits, 54 acres of land within the UGA are proposed for Industrial zoning. Desirable industries include those dependent upon the identified factors unique to Sumas, yet requiring little sewer service. Examples are intermodal transfer facilities (such as truck-rail or pipeline-rail), warehousing, manufacturing, and electric co-generation. (p. 3-11, CLUP, 10/98 revision)

The SE2 proposal is an electric co-generation facility dependent upon proximity to the major gas pipelines east of town, and is therefore consistent with the CLUP intent.

The proposal will generate substantial sewage effluent, whereas the CLUP describes desirable industries as those "requiring little sewer service." This CLUP language is present because of contractual and physical limitations associated with Sumas' existing sewage contract with Abbotsford, B.C. SE2 proposes to construct, at its expense, new sewage facilities as necessary to accommodate project flows, thereby addressing this issue. SE2's proposal is consistent with the CLUP policy that a capital facility providing benefit to a new development should be paid for by the developer.

A portion of the site is designated as a Natural System Protection Area (NSPA) within the CLUP. Generally, NSPAs are intended to foster the protection and enhancement of fish and wildlife habitat. NSPA designations are shown on CLUP Map 4B, and "area 4" on that map is located on the Hesselgrave Farm property. The pertinent area-specific discussion is shown below:

- 4) This 11.7-acre dumbbell-shaped area lies within an undeveloped 40-acre industrially-zoned parcel owned by Hesselgrave Farms that will likely be converted to industrial use early within the planning horizon. The northern part of the dumbbell corresponds to a forested Category II wetland, and the southern part contains a farmed wetland pasture that is mapped in the National Wetland Inventory. The farmed wetland has minor value as waterfowl habitat at this time and has potential for conversion to higher-quality wetland. The farmed wetland also serves an important flood- and stormwater-conveyance function. As mitigation for wetland impacts elsewhere on site, the eventual developer of the 40-acre parcel should enhance the farmed wetland either in its present location or in closer proximity to the forested wetland. (p. 3-6, CLUP, 10/98 revision)

The SE2 proposal involves no impacts to the northern forested portion of the NSPA. As mitigation for wetland impacts elsewhere on the site, the proposal involves creation and/or enhancement of 2.06 acres of wetlands in close proximity to the forested wetland. The proposed mitigation is therefore consistent with CLUP policies related to NSPAs.

Shoreline Plan: The *City of Sumas Shoreline Master Program* (SMP) establishes that "marshes, bogs, and swamps" within SMP jurisdiction shall not be drained, filled, dredged, cleared, or developed (*section 4.2.A.1 SMP*). Because the SE2 proposal involves fill of wetlands, the question of whether those wetlands fall within SMP jurisdiction is important. Since adoption of the SMP in 1988, the City's interpretation has been that wetlands greater than 200 feet distant from Johnson Creek and Sumas River, including the wetlands on the SE2 proposal site, are outside of SMP jurisdiction and therefore not subject to the fill-prohibition. In 1997 the Department of Ecology voiced the opinion that even those wetlands more than 200 feet distant from streams were within SMP jurisdiction, so long as the wetlands were within the floodplain. Ecology's interpretation, if correct, would mean that the fill-prohibition applies to the wetlands on the proposal site.

Ecology encouraged Sumas to revise the SMP in order to clarify ambiguities and incorporate a more modern, flexible approach to wetland management. A revision to the SMP has been developed in cooperation with Ecology and was adopted by ordinance of the Sumas City Council on December 28, 1998. The revision contains provisions allowing fill of certain low-value wetlands, when accompanied by suitable mitigation. The mitigation plan proposed by SE2 is consistent with the 28 December 1998 SMP revision. Ecology's final approval of the revision is expected in March of 1999.

Floodplain Zone: The SE2 site is located within the 100-year floodplain and is therefore subject to the provisions of the Flood Damage Prevention Ordinance codified at Chapter 14.30 of the Sumas Municipal Code (SMC). The ordinance defines an overlay zone, equivalent to the 100-year flood plain, known as the Special Flood Hazard Area (SFHA). However, the standards established for the SFHA in Chapter 14.30 SMC are not *land-use standards* regulating the nature of use within the zone, but rather are *construction standards* pertinent to details of structural design. Chapter 14.30 therefore is not applicable to the SE2 proposal at this stage of development.

Wetland Regulation: The wetlands on the SE2 site are regulated by the Wetland Protection Ordinance codified at Chapter 15.16 SMC. Chapter 15.16 SMC establishes various wetland buffer and management standards depending upon the "category" of wetland in question. Fill and disturbance of wetlands is permitted in varying degrees depending upon wetland category, and if accompanied by approved mitigation.

The EFSEC application materials do not analyze the on-site wetlands within the framework of the wetland categories defined by Chapter 15.16 SMC. Other material available to the City indicates that all wetlands on the site, including the "forested wetland" identified on Figure 3.4-4 within the EFSEC application, are either category III or category IV wetlands according to

Chapter 15.16 SMC. Within those categories, fill and development are permitted when accompanied by approved mitigation. SE2 has submitted a JARPA application to the U.S. Army Corps of Engineers, accompanied by a mitigation plan, seeking approval of the proposed wetland fill. Approval of the proposed mitigation by federal and state jurisdictional authorities will constitute the approval required by Chapter 15.16 SMC. The SE2 proposal therefore is consistent with Chapter 15.16 SMC, provided that federal approval of the proposed wetland impacts and mitigation is issued.

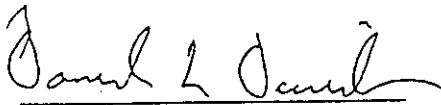
Land-Use Zone: The SE2 site is within the Industrial zone district and therefore subject to the provisions of Chapter 20.44 SMC. Section 20.44.020 SMC describes uses permitted outright within the Industrial zone and includes subsection (7) that reads as follows:

- (7) Transportation and public power (such as freight operations, terminals, communication services and utility generation and transmission systems);

The SE2 proposal is a utility generation and transmission system and is therefore permitted outright within the Industrial zone.

Certification

I hereby certify that the above information is true.


David L. Davidson
City Administrator

March 2, 1999
Date